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Paper No. 20

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DES MOINES, IA 50309-3993

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**OCT 09 2001**

**OFFICE OF PETITIONS**

In re Application of :  
Greaves et al. :  
Application No. 09/206,458 :  
Filed: December 7, 1998 :  
Attorney Docket No. 4532670/6974 :  
Title: **METHOD FOR SIMULTANEOUS** :  
**EXTRACTION OF ESSENTIAL OILS** :  
**AND ANTIOXIDANTS FROM LABIATAE** :  
**SPECIES AND THE EXTRACT** :  
**PRODUCTS THEREOF** :

DECISION ON PETITION

This is a decision on the petition filed on June 28, 2001, pursuant to 37 C.F.R. §1.137(b)<sup>1</sup>, to revive the above-identified application.

The fee for filing a petition to revive an unavoidably abandoned application under 37 C.F.R. §1.137(b) is set forth in 37 C.F.R. 1.17(m) as being one thousand, two-hundred, and forty dollars (\$124.00). Petitioner has submitted one thousand, two-hundred, and ten dollars (\$1210.00) with the instant petition. Additionally, the petition does not include an authorization for the PTO to charge Petitioner's deposit account for any deficient amounts. Therefore, in the absence of either an actual payment or an authorization to charge his deposit account for this fee deficiency, requirement number (2) has not been met.

1 A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) The reply required to the outstanding Office action or notice, unless previously filed;
- (2) The petition fee as set forth in § 1.17(m);
- (3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional, and;
- (4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

The payment of the required petition fee is a prerequisite to the filing of a petition to revive under 37 C.F.R. 1.137. Therefore, consideration of the merits of the petition before receipt of the filing fee would be premature. *M.P.E.P. 711.03(c)(III)(B)*<sup>2</sup>

In view of the foregoing, this petition is **DISMISSED**.

Your response to this letter *must* be submitted within ONE (1) MONTH from the mail date of this decision. Extensions of time under 37 C.F.R. §1.136(a) are permitted. The response should include a cover letter entitled "Renewed Petition under 37 C.F.R. §1.47(b)."

Once this opportunity has passed, *there will be no further reconsideration of this matter.*

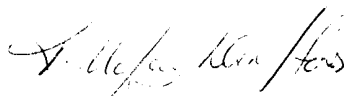
Further correspondence with respect to this matter should be addressed as follows:

By mail: Commissioner for Patents  
Box DAC  
Washington, DC 20231

By FAX: (703) 308-6916  
Attn: Office of Petitions

By hand: Office of Petitions  
2201 South Clark Place  
Crystal Plaza 4, Suite 3C23  
Arlington, VA

Telephone inquiries specific to this decision should be directed to Petitions Attorney Paul Shanoski at (703) 305-0011.



Beverly M. Flanagan  
Supervisory Petitions Examiner  
Office of Petitions  
Office of the Deputy Commissioner  
for Patent Examination Policy

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<sup>2</sup> "...[T]he payment of a petition fee to obtain the revival of an abandoned application is a statutory prerequisite to revival of the abandoned application and cannot be waived. In addition, the phrase '[o]n filing' in 35 U.S.C. 41(a)(7) means that the petition fee is required for the filing (and not merely the grant) of a petition under 37 C.F.R. 1.137. See H.R. Rep. No. 542, 97th Cong., 2nd Sess. 6 (1982), *reprinted in* 1982 U.S.C.C.A.N. 770 ("[t]he fees set forth in this section are due on filing the petition"). Therefore, the Office...will not reach the merits of any petition under 37 C.F.R. 1.137 lacking the requisite petition fee."